

Making Peace with De Facto States

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De facto states are typically conceived of as territories that have gained de facto independence, often following warfare, but have failed to achieve (widespread) international recognition. They have demonstrated a certain staying power—two years of territorial control is a common definitional requirement—and display ‘strong indigenous roots’; they are not simply ‘puppet states’ (see, e.g. Pegg 1998; Caspersen 2012). These entities may enjoy many of the attributes of statehood, but they are not members of the exclusive club of (externally) sovereign states. De facto states are not, however, merely esoteric anomalies in the international system, and they also present significant security challenges: the territory to which they lay claim remains contested and the outbreak of renewed warfare is a very distinct possibility.

Nevertheless, when I first started doing research on de facto, or unrecognized, states more than ten years ago, the literature was scarce and there was, in particular, a lack of understanding of the internal dynamics of these entities. The dominant image—in the media, foreign ministries and even some academic literature—was of criminalized badlands that were ruled by infighting warlords and based their survival on extortion and the smuggling of dangerous goods, including drugs and even radioactive material. Models for such an image are not hard to find. Chechnya between 1996 and 1999 was riven by violent infighting and was typically described as ‘a hotbed of crime and terror’ (Hughes 2007, 93), while inspiration could also be

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taken from the failed states or ungoverned territories that had come to be seen as significant threats to international security. The tribal areas of Pakistan are often described as ‘the most dangerous place on earth’ (Hussain 2012), and the threats emanating from Yemen and increasingly ungoverned Libya are never far from the news headlines.

What I and other scholars hoped to show was that this image was overplayed (see, e.g. Caspersen 2008; Kolstø and Blakkisrud 2008; Berg and Kuusk 2010). Although control by warlords and a preponderance of organized crime did characterize some *de facto* states—especially in the early stages of *de facto* independence—most have in fact taken a decisive step away from this initial disorder, which is in any case not uncommon for a post-conflict context. A lack of external sovereignty does not condemn an entity to disorder and eventual oblivion. *De facto* states have managed to impose effective control over most of the area to which they lay claim, have built at least rudimentary state institutions, and some have even introduced political reforms. The lack of recognition, in fact, provides a strong incentive to build effective institutions and introduce political reforms: it aids their survival and serves an important legitimating function both internally and externally (Caspersen 2012).

De facto states also tended to be viewed as transitory phenomenon. They existed in a temporary limbo in-between the stable alternatives of *de jure* independence or, more likely, forceful reintegration into their parent state. Most were consequently expected to soon go the way of Chechnya and Republika Srpska Krajina and become simply a violent footnote in history.

However, it has become clear that *de facto* states are not simply ephemeral phenomena that will collapse on their own (Broers 2013); they have demonstrated their longevity. The four *de facto* states in the former Soviet space have all existed for more than two decades, as has Somaliland, while Northern Cyprus has been a *de facto* state for four decades. Moreover, new contested territories that could be described as *de facto* states have emerged, most notably the Donetsk People’s Republic and the Luhansk People’s Republic in Ukraine. These two newest additions to the universe of *de facto* states have started to create some of the trappings of statehood, although the extent of ‘indigenous roots’ is still debatable.

In the process of making our peace with the existence of *de facto* states, our understanding of them has become a lot more nuanced and the research on *de facto* states has become increasingly sophisticated. From being very much a niche topic, the study of *de facto* states has gradually moved into the mainstream, not just of conflict studies, which is where my own research originated, but also of area studies and International Relations. *De facto* states may still be seen as esoteric anomalies, but they are anomalies that can tell us something important about state-building, sovereignty and the international system.

The current state of the research, however, still leaves a number of challenges and areas for further exploration. In this contribution, I will focus on three inter-related issues: related to terminology and the way we conceive of *de facto* states; the effects of non-recognition; and the way in which our more nuanced understanding of *de facto* states impact on the prospect for conflict resolution. How can

we, literally, make peace with de facto states? This last question will form the bulk of the contribution, but it is, as I will argue below, affected by the two other issues.

1 Making Peace with—While also Extending: The Concept of De Facto States

As more authors, from different disciplines and with different research foci, have started researching these unrecognized entities, a plethora of terms have been used: de facto states, unrecognized states, contested states, shadow states, para states, phantom states, etc. (see, e.g. Broers et al. 2015). However, there appears to be an emerging consensus on using the term de facto states, and I am happy to bow to this. The term ‘unrecognized states’, which I initially favoured since I was interested in the effects of non-recognition, worked better as a pre-2008 concept, i.e. before Russia’s recognition of Abkhazia and South Ossetia. The term ‘de facto states’ is better able to encompass such partially recognized states.

Greater terminological consensus would not, however, solve the ongoing discussions over which entities ‘qualify’ as de facto states. Should we, for example, include territories such as Iraqi Kurdistan, which function as state-like entities but have not formally declared independence, despite strong separatist sentiments? And what about cases such as Palestine and Western Sahara whose right to self-determination is internationally recognized and which exhibit some institutional attributes of statehood, but do not enjoy the territorial control that normally characterizes de facto states? Or what about rebel movements that control pockets of territory and manage to create some form of governance (see Arjona et al. 2015).

I would propose that in order to better uncover the dynamics of de facto statehood and its effects, it is useful to consider de facto states as the end of a spectrum of non-state governance in intra-state conflicts.¹ Territorial control is a question of degree, as is institution-building and even participatory politics. Scholars working on rebel governance have in fact made arguments very similar to the ones made in the de facto state literature: rebels cannot be reduced to warlords and rebel-controlled areas should not be seen as areas where anarchy prevails. Alternative forms of governance often emerge and we may even speak of a rebel political order; institutions may be built and some public services, including health and education, provided (Mampilly 2011; Arjona et al. 2015). Although there is always an element of coercion, citizens are sometimes encouraged to participate in citizens forums or elections for local committees may be held (Kasfir 2015). Rebel forces who develop effective and legitimate governance systems will find themselves strengthened vis-à-vis the state (Arjona et al. 2015).

Kasfir (2015) argues that rebel governments are frequently ‘fragile, fluid and short-lived’ but also contend that there is a great deal of variation. At the end of the

¹Even if a few of the entities do not emerge from such a context.

rebel governance continuum, we find rebel political order, which is more directly comparable to governance in conventional polities. For this to be possible, a certain duration of territorial control is needed. Now we might assume that *de facto* states would simply constitute a further extension of this continuum. However, Kasfir argues that with *de facto* states, we are dealing with a different category, since they are ‘no longer governed under the pressure of anticipated violence’ and therefore ceases to be cases of rebel governance (2015, 31). But I would argue that this underestimates the continued effect of (potential) violence in the case of *de facto* states; the type of governance found in *de facto* states, and in particular its legitimation, is heavily influenced by the unresolved conflict and the persistent threat of a military offensive (Caspersen 2011). Moreover, the definitions of *de facto* states typically recognize the lack of rigidity, and especially the fact that territorial control is both variable and reversible: rebel governments may increase their territorial control and thereby become *de facto* states, while some *de facto* states facing military attacks reverted to being cases of rebel governance (Caspersen 2012). I would therefore argue that it makes sense to see *de facto* states as the end of a spectrum of rebel governance; their territorial control is more durable and direct violence has largely ceased, thus allowing for greater institution-building. Moreover, the focus of the leaders is no longer on securing a military victory but instead on defending this and pursuing international recognition of the *de facto* situation. This may make the leaders even more concerned with their international image. But although these entities have passed an important threshold in gaining *de facto* independence, I would posit that they are not qualitative different.

2 Making Peace with Non-recognition

As I argued above, lack of recognition does not condemn an entity to anarchy, nor to international isolation or to the status of mere puppets. Some *de facto* states have managed to build surprisingly effective institutions and have introduced political reforms, and some enjoy a reasonably high level of international engagement. Still, I would maintain that the absence of (widespread) recognition matters. The degree of its impact varies, but it is profound. Although some *de facto* states, such as Taiwan, and to a lesser extent Northern Cyprus and Somaliland, are fairly well integrated into the international system (Berg and Toomla 2009; see also Ker-Lindsay 2012), important doors remain closed, and access still seems to be dependent on the approval of the parent state, or the continued inability of the parent state to function effectively, as in the case of Somaliland (see Caspersen 2015). More research is needed, however, on this aspect, including on the interaction between international engagement, state-building and political reforms. Conceiving of *de facto* states as the end point of spectrum, and highlighting the differences within the category, could help illuminate some of the key factors, such as the effect of the duration of territorial control, the degree of territorial control,

links with patron states, and whether or not independence has been formally declared.

Lack of recognition, moreover, remains an existential threat: the territorial integrity of the parent state is still seen as the overriding international norm, and it is still widely accepted that the parent state is allowed to use force to reintegrate the territory, even if against the will of the population of the de facto state. As the case of Tamil Eelam showed, there may be some international criticism in case of severe human rights violations, but it quickly dies down and the right of the parent state to rule over the territory is not questioned. The narrative of future recognition, moreover, plays an important legitimizing function internally; it helps the leaders excuse current shortcoming and the allows them to keep the entity in a state of exception, for example illustrated by the perpetual martial law in the case of Nagorno Karabakh.

This does not mean that the pursuit of recognition is necessarily the main pre-occupation of the leaders of the de facto states. Many of them realize that international recognition is unlikely, at least in the foreseeable future, and instead seek better integration into the international system, as unrecognized or partially recognized entities. They hope that this will improve the status quo and strengthen their de facto independence in the short-to-medium term and possibly make future recognition more likely; or at least make international acceptance of forceful reintegration less likely (Caspersen 2015). However, how sustainable is this and what are the effects on internal dynamics—legitimacy, institution-building—of prolonged experiences of non-recognition? This is another area for future research and one which would again benefit from a more diversified understanding of de facto states: the threat from renewed warfare is, for example, strikingly different for a consolidated entity that enjoys great power support, than for an entity with more insecure territorial control and a lack of external backing. This will also affect the impact of prolonged non-recognition on their internal dynamics.

3 How to Make Peace with De Facto States

There is now a considerably body of research on the internal dynamics of de facto states. This has greatly improved our understanding of them and has helped displace previous simplifications. However, the impact of this more nuanced understanding on conflict resolution has yet to be explored. Regardless of how possible it is to survive, and even thrive, without recognition, the territories remain contested. While the de facto state may be relatively happy with the status quo, the parent state is not and the existence of the de facto state—at least insofar as an explicit demand for independence is made—is seen to violate the principle of territorial integrity.

The question that I will examine for the remainder of this contribution is whether it matters for the prospect of conflict resolution that these entities cannot simply be dismissed as criminalized badlands; that they have managed to create state-like entities, sometimes with surprisingly effective institutions? Does it make it more, or

less, likely that a solution can be found? Or does it affect the nature of such a solution?

This has not been systematically analysed in the existing literature. The prevalent view is that the existence of *de facto* states prolongs a conflict and poses a significant, possibly insurmountable, obstacle to a negotiated solution. The separatists have won the war or at least the first round of conflict. Entities such as Nagorno-Karabakh, Abkhazia, South Ossetia, Somaliland and Northern Cyprus therefore already enjoy the *de facto* independence and territorial control to which other separatists aspire. A stalemate could be said to exist insofar as the *de facto* states cannot reach the goal of international recognition through military escalation, and the risk of a catastrophic war is forever present, but it is to a 'soft' stalemate not a hurting one (see, e.g. Hopmann and Zartman 2010, 2). The leaders of these entities therefore have little reason to compromise. As King asks, 'why be a mayor of a small city if you can be president of a country?' 'why be a lieutenant in someone else's army if you can be a general in your own?' (2001, 551).

If we view *de facto* states as the end of a continuum, as far as territorial control is concerned, then there is little doubt that these entities are negotiating from a relative position of strength and this makes it hard to convince them to accept less than full independence. It is far more common for secessionist movement to control no territory or only a few districts, and often only for a short time, or there may be pockets of contested territories where, for example, the state rules by day, but the rebels by night (Kasfir 2015). In such cases, the secessionist leaders will have far greater incentive to agree to a peace agreement that promises them a degree of self-government or similar; this would in some ways constitute a gain.

The policy implications of this argument are straightforward and readily adopted by central governments: avoid the creation of a *de facto* state and do your utmost to weaken it if one does emerge. Make sure that incipient rebel governance is not strengthened through international engagement, possibly avoid negotiating directly with rebel leaders as this implies recognition of their status; isolate *de facto* states, for example through blockades, and fight any links that would legitimize or normalize their existence.

Another version of this argument would point to the involvement of patron states. The secessionist movements strong enough to achieve *de facto* independence, and in particular maintain it, usually enjoy the support of a patron. Such third party involvement is usually seen as an obstacle to a negotiated solution (Doyle and Sambanis 2000). Although *de facto* states should not be seen as mere puppets of their patron states, the patron state may enjoy an effective veto in any peace talks which, if nothing else, complicates attempts to find a solution as more players have to come to an agreement.

All else being equal a conflict becomes much harder to resolve once the secessionist forces secure *de facto* independence and especially if they manage to maintain it for a period of time. However, all else is not equal: the territorial control also makes it possible to build institution and ensure greater internal cohesion

(Kasfir 2015). And this could pull in the opposite direction. One of the factors argued to explain the longevity of civil wars is the number of factions involved: the more factions involved, the longer the war is likely to last (Doyle and Sambanis 2000). This is especially the case if the factions themselves lack cohesion and a clear structure and chain of command. Conflicts with many rebel factions are characterized by both intra- and inter-communal violence, the dynamics are unpredictable, and negotiating a lasting solution is near-impossible: who do you negotiate with; will they be able to deliver their followers? The need for credible commitment in peace talks is widely emphasized in the literature (Walter 2002). Such commitment requires negotiators who are in control of their community², and this would suggest that separatist state-building could in fact have a positive effect.

The ability to identify what Zartman (1995) terms a ‘valid spokesperson’ does not, however, translate into a willingness to accept a compromise solution. In cases where de facto independence has already been achieved, any solution short of independence is unlikely to prove acceptable. The leaders of Nagorno Karabakh are, for example, adamant that independence is non-negotiable, and insist that Azerbaijan has to accept the ‘current reality’ (i.e. de facto independence).³ It may, in other words, be possible to negotiate an agreement, but not necessarily one that the parent state would accept. It is possible that there is a threshold beyond which ‘rebel control’ makes an agreement more difficult to achieve. The Free Aceh Movement (GAM) in Indonesia appears to have been on the ‘right’ side of this threshold. Between 1998 and 2005, when the Memorandum of Understanding was signed, the Free Aceh Movement had control over a handful of districts and managed to establish certain elements of governance in this area, including the supply of some public services. As part of this strategy, the GAM incorporated different societal forces, which helped ensure a more legitimate and cohesive movement (Barter 2015). However, the territorial control remained confined and GAM suffered significant military setbacks in the years leading up to the agreement. They consequently came to realize that independence was not realistic and eventually settled for extensive autonomy (Merikallio and Ruokanen 2015). But unlike a more fractionalized movement, they were able to make it stick; they avoided a significant split and could use the incipient institutions already created to consolidate their power and implement the agreement (Barter 2015; see also International Crisis Group 2013). In the case of Sudan on the other hand, the Sudanese People’s Liberation Movement/Army was in control of most of the southern part of the country and was able to create a partially effective system of governance that provided ‘a degree of stability of certain areas of South Sudan’ (Mampilly 2011, p. 22). The SPLM/A made clear that they would not settle for autonomy and would only accept an agreement that included an independence referendum following an

²However, the literature on commitment problems in civil wars has generally treated the conflict parties as unitary actors.

³Interview with Hrachya Arzoumanyanyan, expert in the NKR foreign ministry, Stepanakert, 1 November 2008.

interim period; this would give them a way out, if the central government failed to reform the state sufficiently, and it also satisfied the separatist faction of the SPLM/A. This faction came to be dominant following the signing of the agreement and South Sudan became independent in 2011 (see, e.g. Brosché 2008). Such an agreed secession could provide stability—although it did not in this case, as I will return to shortly—but it will rarely be acceptable to the parent state. A similar framework has been suggested in the case of Nagorno Karabakh: a popular vote following an interim period is to determine the region's future status. Azerbaijan is vehemently opposed to any vote that could lead to independence for Nagorno Karabakh, arguing that the entire country must have a say if the referendum includes the option of independence (see, e.g. Trend Agency 2011). In other conflicts, the insistence on territorial integrity also comes from the international mediators. The 'Basic Principles for the Division of Competencies between Tbilisi and Sukhumi' which the UN proposed in 2001 and which remained the framework for mediation efforts for several years spoke of Abkhazia as a 'sovereign entity, based on the rule of law, within the State of Georgia'. The Abkhaz leadership, however, refused to even receive the document (Francis 2011).

The above arguments have, however, made no distinction between different types of separatist governance: do they, for example, rely on popular support or on coercion? Is their governance focused solely on security or do they also provide other public services such as health and education. Some *de facto* states have implemented political reforms, and it could be argued that the resulting movement away from military leaders, or warlords, towards civilian politicians would tempter the militaristic rhetoric, increase diversity and open up for alternative solutions. When Abkhazia held multiparty elections in 2004, which resulted in the victory of the non-regime candidate Sergei Bagapsh, there were initially hopes that this transfer of power would make it easier to reach a negotiated solution, especially when combined with the previous year's regime change in Georgia. After all, the new Abkhaz government included people who had taken part in track II dialogue with Georgian counterparts and were said to acknowledge, in private, the need for compromise with Georgia.⁴ The problem is, however, that the kind of democratization that we find in *de facto* states is usually constrained (Caspersen 2011). We may find competing political parties representing diverse views, but on the issue of independence, we tend to observe intra-communal consensus, even if there may be disagreements over how best to achieve international recognition and maintain *de facto* independence. It is not merely hardliners who regard sovereignty as non-negotiable (see Lynch 2004, 51). Elections are not separate from the overall secessionist project; for example, in both Abkhazia and Nagorno Karabakh, the electoral processes are founded on ethnic exclusion (Ó Beacháin 2015). Moreover, the reasoning for the population can be strikingly similar to the political elites: 'why be a minority in someone else's states when you can be a majority in your own?' Such a question is even easier to answer given the years of propaganda that has

⁴Interview with Paata Zakareishvili, Tbilisi, 31 August 2006.

painted the parent state as an enemy bent on their annihilation. Similarly, both institution-building and political reforms will result in stronger and more legitimate entities and both leaders and followers may consequently see even less reason to consider a risky compromise.

On the other hand, in conflicts including de facto states—intra-state conflicts at the extreme end of the rebel governance spectrum—a common state is rarely a realistic solution, at least not in the short term. If the parent state refuses to consider secession, or various forms of shared sovereignty, the best that can be hoped for is for relations to be re-established and mistrust to gradually subside (Caspersen 2012). This will be a lot easier with effective entities that are not ruled by unrepresentative warlords. Over the long term, new dynamics may emerge especially if the security threat subsides. The narrative of future recognition and the persistence of an external threat are powerful instruments for ensuring internal cohesion, but their effectiveness is likely to wane if recognition remains unlikely. This could open the way for a rapprochement with the parent state.

The effect of rebel governance on the prospect of a negotiated settlement is therefore double-sided, but probably tends to make it harder to reach a solution that both sides can agree to, at least at the de facto state end of the spectrum. However, the effect on the post-settlement phase is more likely to be positive. Whether the state is maintained or not, a common cause of instability is a lack of capacity in what now becomes a self-governing region (Caspersen 2017). Without sufficient capacity, the local leaders will be unable to defeat spoilers set on undermining the agreement and will also lack the resources to supply public services and thereby legitimize the agreement in the eyes of the general population. This further adds to the risk of spoiler violence. Such instability is clearly detrimental to human security, but it also risks undermining the agreement as a whole. Following the signing of a peace agreement in 1996, Mindanao in the Philippines, for example, became a byword for anarchy; the autonomous government led by the former rebel movement, the Moro National Liberation Front, did not have the capacity to defeat or marginalize spoiler groups and also struggled to provide public services; as a result the agreement lost backing from the local population and spoiler groups were strengthened (Lara and Champain 2009). The risk of instability is augmented if the former rebels institute a regime that lacks inclusivity. During the war, the rule of the SPLM/A had focused on security; it had failed to build effective institutions and it had also remained dominated by the Dinka ethnic group (Mampilly 2011). This became a problem following the 2005 peace agreement and especially South Sudan's independence. The government was authoritarian and ethnically exclusive and unable to meet the economic expectations of the inhabitants (Sriram 2008; Brosché 2008). It did not take long before internal divisions came to the fore and civil war broke out (Jones and Anderson 2015). This demonstrates that the territories held by rebel forces cannot simply be treated as *terra nullius*. Moreover, not only territorial control matters, institutional capacity and the nature of the separatist regime has an impact on the sustainability of a settlement. It seems that if an agreement is reached—which may be a tall order indeed—then de facto states, or a

high degree of rebel political order, could provide a good basis for sustainable peace, especially if they have institutionalized a degree of diversity.

4 Conclusion

This contribution has suggested that the changed understanding of de facto states also has implication for conflict analysis. Reaching a compromise solution when a de facto state is involved will never be easy, but the longer-term prospects, and the conditions for the inhabitants in the meantime, depend on the type of de facto states that has been created; the degree to which effective institutions have been built and political reforms introduced. This, moreover, also matters for the sustainability of any agreement reached. However, these broad hypotheses need to be subjected to systematic research. Conceptually, I have called for viewing de facto states as the end of a continuum of rebel governance, and just like the literature on rebel governance has policy implications, so does the above discussion. Isolating or weakening de facto states is not the only possible response, and it may indeed backfire and simply increase the influence of the patron state. Engagement is an alternative: not just for the sake of civilians during the war (Mampilly 2011), but also to strengthen reform forces within these entities which could gradually create a situation more conducive to compromise and to a sustainable settlement.

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